

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUILLERMO VILLA-GONZALES,

Defendant - Appellant.

No. 04-30544

D.C. No. CR-04-00167-EJL

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Guillermo Villa-Gonzales appeals the 18-month sentence imposed following his guilty plea conviction for possession of a firearm by an alien illegally in the United States, in violation of 18 U.S.C. § 922(g)(5), and criminal forfeiture, in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because we conclude that the district court erred under *United States v. Booker*, 125 S. Ct. 738 (2005), and because Villa-Gonzales preserved this constitutional error below, we vacate the sentence and remand for resentencing under the now-advisory Guidelines. *See United States v. Kortgaard*, 425 F.3d 602, 610-11 (9th Cir. 2005).

SENTENCE VACATED AND REMANDED.